

ARTICLE XIII
WETLANDS AND WATERSHED PROTECTION ORDINANCE
November 18, 2021

I. Findings and Purpose

This ordinance protects the health, safety, and general welfare of the residents of Webster by regulating land uses and development next to wetlands and surface waters. The protection and preservation of natural wetland buffers serves to:

- Protect clean water in Webster for current and future residents;
- Maintain drinking water quality by reducing erosion and transport of contaminants and pollutants;
- Preserve the natural drainage characteristics, provide adequate groundwater levels and reduce stormwater and flood impacts;
- Provide and protect a diverse habitat for plants, wildlife and aquatic organisms;
- Minimize damage to public and private property and expense to repair and reconstruct roads, sewage systems and storm drain systems;
- Enhance the scenic beauty of the Town, promote recreation, and preserve its character, quality of life and property values by regulating uses and development;
- Support the goals of the Webster Hazard Mitigation Plan and the Master Plan.

II. Authority

This Ordinance creating a wetlands and watershed protection overlay district is enacted pursuant to the general authority granted by NH RSA 674:16, as amended, and the specific authority granted by NH RSA 674:21, Innovative Land Use Controls, as amended, as environmental characteristics zoning. The Planning Board is charged with administering this Ordinance and with acting upon applications for Conditional Use Permits, as outlined in Section VII.

III. Wetlands and Watershed Protection District Boundaries and Buffers

The Wetlands and Watershed Protection District (the “District”) is an overlay District that consists of all Wetlands and Surface Waters and all of their Buffers.

A. Level 1 District

The Level 1 District consists of those areas listed below, and a Buffer of one hundred (100) feet from the edge of each of them:

1. Wetlands

The twenty-five Wetlands indicated by number on the Webster Wetlands Ordinance Level 1 District Map prepared by GZA GeoEnvironmental, Inc., displayed online on the Town website, on file at the Webster Town Office, and incorporated in this Ordinance as Exhibit A.

2. Surface Water

The following Surface Waters, including adjacent Wetlands: Lake Winnepocket, Walker Pond, Trumbull Pond, Warner River, and Blackwater River.

3. Other

All other Wetlands and Surface Waters equal to or greater than two acres in size that have four or more functions and/or values per the Army Corps of Engineers Highway Methodology Workbook Supplement, Wetlands Functions and Values (ACOE-HM), or successor method.

4. Vernal Pools.

B. Level 2 District

All Wetlands and Surface Waters that are greater than a quarter acre in size and that are not included in the Level 1 District defined in Section III.A, plus a Buffer of fifty (50) feet from the edge of such Wetlands or Surface Waters.

C. Buffers for Existing Lots Less than Two Acres in Size

For existing Legal Nonconforming Lots less than two acres in size, which contain any of the Wetlands or Surface Waters set forth in this Section III, or if such Wetlands or Surface Waters are located on an adjacent lot, the applicable Buffer shall be fifty (50) feet from the edge of the Wetlands or Surface Waters.

D. Buffers Not Required

Buffers shall not be required if the wetland is one of the following types:

- A constructed vegetated swale, roadside ditch, or driveway ditch;
- A sedimentation, detention, or retention basin;
- An excavated agricultural, irrigation, or fire pond.

E. Buffers

	Buffer Width	Lots Less Than 2 Acres
Level 1 District	100'	50'
Level 2 District	50'	50'

IV. Uses

Uses	Level 1 District	Level 2 District
Hazardous waste disposal, solid waste landfill/transfer station, recycling facility, septic lagoon, junkyard, snow dump, road salt	NP	NP
Underground storage of chemicals, petroleum products, toxic & hazardous materials	NP	NP
Erection/construction of structures	NP	NP
Recontouring/grading of land	NP	NP
Draining, dredging, filling, or change in flow of water	NP	NP
Activities which alter the natural drainage system including on-site detention/treatment of stormwater runoff	CUP	CUP
Construction of new streets, roads, and other access ways	CUP	CUP
New domestic water wells	CUP	CUP
Deck expansion	CUP	CUP
Fencing	CUP	CUP
Wetland restoration activities	CUP	CUP
Agricultural and farming (1)	P	P
Timber harvesting and forestry (2)	P	P
Gasoline storage subject Zoning Ordinance, Article XII.F.2	P	P
Activities incidental to residential use such as normal vegetation maintenance, mowing, trimming, removal of dead or diseased vegetation	P	P
Removal of invasive species (3)	P	P
Repair and/or maintenance of existing streets, roads, utility easements, power lines and pipelines	P	P
Hunting and Fishing	P	P
Hiking Trails and Conservation Areas	P	P
Wildlife habitat development and management	P	P
Construction of dock/pier in accord with State law	P	P
Replacement of existing septic system in accord with State law	P	P

P – PERMITTED

CUP – PERMITTED WITH CONDITIONAL USE PERMIT

NP – NOT PERMITTED

(1) Includes agricultural activities as defined in NH RSA 21:34-a and as governed by RSA 430, provided that such activities and operations are in conformance with RSA 482-A and the most recent best management practices determined by the USDA Natural Resources Conservation Service, NH Department of Agriculture, Markets & Food, and UNH Cooperative Extension.

(2) Timber Harvesting operations shall utilize best management practices as described in Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire; and (2) comply with all applicable state laws including RSA 227-J:9. Cutting of Timber Near Certain Waters and Public Highways, obtaining and filing an intent to cut form according to RSA 79:10 (as appropriate), and filing a complete Notification of Forest Management Activities Having Minimum Wetlands Impact according to RSA 482-A:3, V.(a), or obtaining a NHDES Wetlands permit according to RSA 482-A.

(3) Removal or control of “invasive”, non-native or poisonous plants, in accordance with the Best Management Practices recommended by the NH Dept. of Agriculture and/or the NH Department of Environmental Services.

Any use not permitted in Section IV or not permitted in Section IV with a CUP is prohibited.

The Planning Board shall not issue any CUPs for the one hundred (100) foot buffer within the Level 1 District for new construction.

V. VARIANCE

A. Variance

Relief from any requirement set forth in this Ordinance shall be obtained only through application for a variance from the Webster Zoning Board of Adjustment (ZBA,) which the ZBA may grant or deny according to applicable law.

B. Review

The ZBA shall provide the variance application, and all materials submitted in support of the application to the Planning Board and the Conservation Commission at least 14 days prior to the hearing. If the Planning Board or the Conservation Commission provides input to the ZBA during or prior to the hearing, the ZBA shall consider such input prior to granting or denying any such variance.

VI. Legal Nonconforming Uses, Structures and Lots

Any Legal Nonconforming Use may be continued indefinitely subject to the following limitations:

1. When a Legal Nonconforming Use has been discontinued for one year or more, such nonconforming use shall have been abandoned, and then the land shall be used thereafter only in conformity with this Ordinance.
2. Any Legal Nonconforming Use shall not be changed to another Nonconforming Use. Any Legal Nonconforming Use shall not be expanded. In the event of any such change or expansion, such Nonconforming Use shall be deemed to have been abandoned and then the land or Structures shall be used thereafter only in conformity with this Ordinance.

If a Legal Nonconforming Use is superseded by a Conforming Use, then it shall thereafter conform to the Use regulations of this Ordinance, and the Nonconforming Use may not thereafter be resumed;

3. Nothing in this Ordinance shall prevent the restoration, reconstruction, and/or replacement within 2 years of a structure destroyed in whole or in part by fire or other natural disaster so long as the restoration, reconstruction, and/or replacement does not result in a new or expanded Nonconforming Use.

B. Legal Nonconforming Structure located entirely or partly within the District may be continued indefinitely, altered, expanded, repaired, and/or replaced, provided it complies with the following applicable provisions:

1. Alteration, repair and/or replacement of the Structure is permitted only within the existing building footprint, including the foundation;
2. A legal, nonconforming Structure may not become more nonconforming;
3. A legal nonconforming structure damaged or destroyed by fire or other natural disaster can be restored, reconstructed and/or replaced within two (2) years so long as it is a functionally equivalent use.

C. Legal Nonconforming Lot -- any lot with less area or frontage than required which is lawfully established, recorded, and taxed as a lot of record before the adoption of this Ordinance, shall be deemed a conforming lot.

VII - Conditional Use Permits

A. Application, Inspection, Studies

1. An application for a Conditional Use Permit (CUP) shall be filed with the Planning Board within the application filing deadline. The submission requirements, including plan or hand drawn map, list of abutters, fees, and deadlines, are specified on the CUP application form.
2. In the event that the applicant is also seeking subdivision and/or site plan approval from the Planning Board, the applicant may request the Conditional Use Permit application hearing to occur simultaneously with a hearing on a subdivision and/or site plan application for the same project.
3. The Planning Board, or its authorized designee, including the Webster code enforcement official, may inspect the property during the process of review and action on the application, and during all phases of development to ensure compliance with this ordinance.
4. The Planning Board may require third-party investigations or studies necessary to evaluate an application for a CUP. The cost of such study shall be borne by the applicant. See Section VIII.C, Wetlands Delineation, Evaluation and Dispute Resolution.

B. Summary of Process

1. The Planning Board refers the CUP application to the Conservation Commission for review and comment, within five (5) days prior to the public hearing.
2. The Planning Board determines whether the application is complete, at a duly noticed public hearing. Federal and/or State permit(s) have been received for the proposed activity and the applicant has provided proof of compliance with all other Federal and State regulations, where applicable.
3. The Planning Board considers the Review Factors and Findings for granting a CUP listed below.
4. The Planning Board then votes to approve the application as presented, approve it with conditions, deny it, table it, continue it, or any other procedurally correct option.
5. Any decision of the Planning Board granting a CUP shall be noted on the recorded plan. The applicant will receive a letter from the Planning Board indicating approval or denial; and if it was a conditional approval, all conditions of approval.
6. The Planning Board may attach conditions to the approval, including but not limited to mitigation efforts and/or impact fees, per Section IX.
7. The Planning Board may require that such conditions be annotated on a site plan or subdivision plan, or otherwise recorded at the Merrimack County Registry of Deeds.
8. All CUPs issued by the Planning Board shall be implemented within one year. The Planning Board may issue a one-time extension for up to an additional two years.
9. Any person aggrieved by a Planning Board decision on a CUP may appeal that decision to the superior court (NH RSA 677:15, III, as amended).

C. Review Factors for Conditional Use Permits

1. The application is complete. **All required documents, including State and/or Federal permits, have been submitted by the applicant.**
2. Comments from the Conservation Commission are considered, as well as testimony and evidence introduced at the public hearing.
3. Applicant's representations made at a public hearing or in material submitted to obtain a CUP may be deemed conditions of the issuance of the permit.

4. Special reports of the project and results of scientific studies are reviewed, if available.
5. Feasible alternative sites for the proposal on land controlled by the applicant that does not intersect with the District are considered.
6. Design, construction and erosion control methods will be such as to avoid and minimize impact upon the District, and may include barriers to restrict access to sensitive resources during construction, including but not limited to orange construction fencing.
7. The Planning Board may require mitigation efforts and attach mitigation conditions as conditions of approval, as outlined in Section IX herein.
8. The findings, goals and objectives of the Master Plan are considered.

D. Findings for Granting a Conditional Use Permit

1. The use is specifically authorized as a conditional use in Section IV, Table of Uses.
2. The proposed use is consistent with the purposes of the District and is compatible with the area and with adjoining or abutting uses.
3. The development will comply with all requirements and with specific conditions or standards established in this ordinance.
4. The use will not endanger the public health or safety.
5. The proposed use or activity minimizes the degradation to, or loss of Wetlands and Buffers. The use or activity minimizes any adverse impact to the functions of the Wetlands and Buffers.
6. The use will be adequately serviced by necessary public utilities and public safety services and will not necessitate excessive public expenditures to augment such services.

VIII. Administration

A. Application of Buffers

Buffers are applied without regard to lot lines and municipal boundaries, except that when a Wetland is bounded by a Town Class V or better roadway, or a State highway existing at the time of adoption of this Ordinance, Buffers are not applied to properties directly across the right of way.

B. Minimum Lot Size

The creation of the overlay District is not intended to affect the minimum lot size requirements for the underlying zoning District in Article IV of the Webster Zoning Ordinance. However, the land area outside of the District must meet requirements of the Webster Zoning Ordinance, unless otherwise permitted.

C. Wetlands Delineation, Evaluation and Dispute Resolution

If a boundary of a District or the function or value of any Wetland within the District needs to be determined or is disputed by either the Planning Board or an applicant, it shall be determined by the Planning Board. The methodologies currently used by NH DES shall be used to delineate boundaries and/or evaluate functions or values of the wetlands in question. The Planning Board, at the applicant's expense, or the applicant shall engage a Certified Wetlands Scientist to assist in this process.

D. Waivers

The Planning Board may waive any requirements of the CUP application. The basis for any waiver granted by the Planning Board shall be recorded in the minutes of the Board. The Planning Board may only grant a waiver if the board finds, by majority vote, that:

1. Strict conformity to the specific CUP would cause undue hardship to the owner of the land; or
2. Specific circumstances relative to the CUP, or conditions of the land indicate that the waiver will properly carry out the spirit and intent of this ordinance.

IX. Mitigation

The Planning Board has the full and absolute discretion to require or reject proposed mitigation efforts as a condition of CUP approval. If required, mitigation will be provided in one or more of the following manners in form and substance acceptable to the Planning Board, which shall consider comments from the Conservation Commission. Licensed professionals should be retained to design these mitigations. Mitigation efforts may include, but are not limited to:

- A. Expansion of the Buffer width greater than one hundred (100) feet of a Level 1 District Wetland or fifty (50) feet of a Level 2 District Wetland around the remaining portion of the impacted region within the subject lot or lots under the application;
- B. Expansion of the Buffer width greater than one hundred (100) feet of a Level 1 District Wetland or fifty (50) feet of a Level 2 District Wetland around other Districts within the subject parcel under the application;
- C. Preservation of upland areas adjacent to other Districts by easement and/or deed restrictions for wildlife habitat development and management within the subject parcel or adjacent parcels;
- D. Preservation of upland areas adjacent to other Districts by easement and/or deed restrictions for wildlife habitat development and management within the Town;
- E. Development of conservation areas and nature trails within the subject parcels, provided that the Planning Board reviews and approves plans for such areas and trails prior to their development.

X. Enforcement and Penalties

1. This Ordinance shall be administered by the Planning Board and enforced by the Select Board, their designee, or as permitted by law. Any violation of this Ordinance shall be subject to a civil fine as provided in NH RSA 676:16 and 676:17, both as amended. The Select Board or the Code Enforcement Officer (or other designee) are designated as the local authorities to institute appropriate action under the provisions of NH RSA 676:17 and NH RSA 676:15, as amended. Any violation of approved components may result in penalties and fines, as provided for in NH RSA 676:15, Injunctive Relief; NH RSA 676:17, Fines and Penalties; NH RSA 676:17-a, Cease and Desist Orders; and 676:17b, Local Land Use Citations, all as amended.
2. If the area is regulated by the State, unless the State has delegated enforcement authority to the municipality, the State would be responsible for enforcing the violation. The State may ask for local expertise to assist them in their investigation and prosecution. The Planning Board cannot regulate timber harvesting unless it is part of a subdivision application or a site plan review.

XI. Definitions

Buffer: an area of upland habitat adjacent to a Wetland (1) that is essential for the continued maintenance and ecological stability of the Wetland.

District: the overlay district created under Section V, which places additional land use controls to those existing underlying Zone Districts.

Legal Nonconforming Lot: a Lot which, in whole or in part, does not conform to the regulations of the district in which the Lot is located, but existed as a legal Lot prior to the adoption of the regulation(s) that now make the lot nonconforming.

Legal Nonconforming Structure: a Structure which, in whole or in part, does not conform to the regulations of the district in which the Structure is located, but existed as a conforming Structure, or legally replaced a legal structure, prior to the adoption of the regulation(s) that now make the Structure Nonconforming.

Legal Nonconforming Use: a use of any building, Structure, or land, which does not conform to the use regulations of the zone district in which such use exists, but existed as a legal use prior to the adoption of the regulation(s) that now make the use Nonconforming.

Structure: any human-made improvement or addition to the land, including buildings, fences, walls, pavement, whether affixed permanently to the ground or not.

Surface Waters: "Surface waters of the state" as defined is NH RSA 485-A, XIV, as amended.

Vernal Pool: (as defined in NH RSA 482-A:11, I, as amended,; ENV-Wt 104.440, as amended) means a surface water or wetland, including an area intentionally created for purposes of compensatory mitigation, that provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments. Typically has the following characteristics: (1) Cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year; (2) Forms in a shallow depression or basin; (3) Has no permanently flowing outlet; (4) Holds water for at least 2 continuous months following spring ice-out; (5) Lacks a viable fish population; and (6) Supports one or more primary vernal pool indicators, or 3 or more Secondary Vernal Pool indicators.

Wetland(s) means as defined in NH RSA 482-A:2, X, as amended "an area that is inundated or saturated by Surface Water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

X. Conflicting Provisions

Where this Ordinance is in conflict with other municipal, state, or federal laws, the more stringent shall apply.

XI. Validity

If any section or part of section or paragraph of this Ordinance shall be declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or sections or part of a section or paragraph of this Ordinance.

This Ordinance enacted on March ____, 2022